IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO(HMA) No. 290 of 2002.

Judgement reserved on: 18.5.2007

Date of decision: 19.6.2007.

Manorma Devi ….. **Appellant.**

Vs.

Chet Ram …. **Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr.Lakshay Thakur, Advocate.

For the Respondent : Mr. Y.P.S.Dhaulta, Advocate.

Kuldip Singh, Judge.

The wife is in appeal for enhancement of maintenance against the judgement dated 1.5.2002, passed by the learned Senior Sub Judge, Mandi in HMA No. 9/98, allowing Rs. 500/- per month, maintenance to her from the date of order.

2. The facts in brief are that appellant -wife filed a petition, under Section 10 of the Hindu Marriage Act, 1955 (for short, the Act), for judicial separation against the respondent-husband, which was allowed on 16.3.1998. She filed an application on 11.6.1998 for grant of maintenance and litigation expenses. She has pleaded that respondent is working as Shastri teacher and also owns movable and immovable properties in village Anderata, he

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Whether the reporters of the local papers may be allowed to see the Judgment?

gets Rs. 10,000/- P.M. salary and in addition he earns Rs.10,000/- annual income from movable and immovable properties. The appellant is a poor lady having no source of income. The husband is living in adultery with Smt. Krishna. She has claimed Rs. 4,000/- P.M. on account of maintenance and Rs. 1,000/- litigation expenses from husband and made prayer accordingly.

3. The petition was contested by respondent- husband, who took preliminary objection of maintainability. On merits, he has submitted that wife earns more than Rs. 3,000/- per month from tailoring. It has been admitted that respondent is a teacher, but he has denied that he owns movable and immovable properties, as alleged. The wife has left the company of respondent without any reasonable cause. It has been denied that respondent is living in adultery with Smt. Krishna Devi. According to respondent, the appellant-wife is not entitled to any maintenance.

4. The trial court framed the following issues.

1. Whether the applicant is entitled to the amount as claimed as permanent alimony from the respondent? OPA.
2. Whether the petition is not maintainable? OPR
3. Whether the petition is not drafted as per rule and is liable to be dismissed? OPR
4. Relief.

5. In issue No.1, it has been held that respondent is a teacher and earns Rs. 10,000/- per month. The appellant has no source of income for her maintenance and therefore, appellant is

entitled to maintenance. In view of findings on issue No.1, issue No. 2, has also been decided against the respondent. Issue No.3 has been decided against the respondent. The trial court allowed maintenance at the rate of Rs. 500/- per month from the date of the order. The wife has assailed the impugned order by way of appeal.

6. I have heard the learned counsel for the parties and have also gone through the record.

7. The learned counsel for the appellant- wife has submitted that in view of the proved income of respondent, the court below has allowed less maintenance to the wife. The appellant is entitled to Rs. 4000/- per month maintenance on the basis of the material on record. On the contrary the learned counsel for the respondent has submitted that the court below has already allowed maintenance on the higher side to the appellant , and therefore, she is not entitled to further enhancement of maintenance.

8. The controversy involved in the appeal is very narrow. Ex. PA is the copy of judgement dated 16.3.1998, passed by the learned Senior Sub Judge, Mandi, in HMP No. 26 of 1995, in which it has been held that respondent Chet Ram was living with Smt. Krishna Devi and was maltreating, beating the appellant. Therefore, appellant was entitled to decree of judicial separation against the respondent.

9. Smt. Manorma Devi, has appeared as PW 1 and has stated that she is graduate and respondent has not paid maintenance to her. She has no source of income. The respondent

is a Shastri teacher and draws Rs.10,000/- per month salary. PW 2 Ramesh Kumar, Headmaster has proved Ex. P2/A certificate showing that as on 1.9.1999, the respondent was drawing Rs. 10,429/- salary.

10. RW 1 Chet Ram has admitted that petitioner is his wife. He has admitted that he is a Shastri teacher and is drawing Rs. 10,000/- salary. He has admitted that Manorma Devi petitioner has no source of income.

11. In the light of above evidence, it has been proved that respondent is drawing Rs. 10,429/- per month salary as teacher and petitioner has no source of income. The appellant has stated that respondent has two children from another woman. The question is to what amount of maintenance the appellant is entitled to from respondent- husband? In **P.S.Krishna Murthy v. P.S. Umadevi** [AIR 1987 Andhra Pradesh 237], Rs. 300/- maintenance to the wife against the income of Rs. 1500/- per month of the husband has been upheld. In **Mukan Kunwar vs. Ajeetchand** [AIR 1958 Rajasthan 322], the court has held that in absence of special circumstances maintenance should be allowed at 1/5th annual income of the respondent-husband. In **Radhikabai vs. Sadhuram Awatrai** [AIR 1970 Madhya Pradesh 14], the court has allowed 1/3rd maintenance to the wife against the income of the husband.

12. There is thus no hard and fast rule as to what should be the ratio of maintenance to wife against the income of husband. It depends upon the facts and circumstances of each case. In the

present case, appellant has stated that the respondent has two children from another woman. The statement of the respondent was recorded by the court below on 26.7.2001 and he has given his age on that date 41 years. Therefore, respondent as of date is about 47 years of age. In these circumstances, it can safely be presumed that those two children must be studying. The respondent is under legal obligation to maintain those two children and therefore, while allowing maintenance to the appellant the fact of education and maintenance of those two children is also to be taken into consideration.

13. A Division Bench of this Court on 7.1.2003, in CMP No. 910 of 2002, in this appeal has allowed pendente lite maintenance at the rate of Rs. 2500/- per month to appellant-wife with effect from 1.10.2002 and Rs. 4000/- towards litigation expenses. I am of the view that keeping in view the facts and circumstances of the case, the order dated 7.1.2003 in CMP No. 910 of 2002, is just and equitable and same should be made applicable in the main appeal w.e.f. 1.10.2002, but respondent shall pay maintenance to wife at the rate of Rs.500/- per month from the date of filing of maintenance application, under Section 25 of the Hindu Marriage Act in the court below, i.e. 11.6.1998 to 30.9.2002 and Rs. 3,000/- towards litigation expenses of the court below.

14. The result of the above discussion is the appeal is allowed and the impugned order is modified. The appellant-wife is held entitled from respondent- husband maintenance at the rate of

Rs. 500/- per month from the date of filing of the application for maintenance, under Section 25 of the Hindu Marriage Act in the court below, i.e. 11.6.1998 to 30.9.2002. Thereafter with effect from 1.10.2002, the respondent-husband shall be liable to pay maintenance to appellant-wife at the rate of Rs. 2500/- per month and Rs. 3000/- towards litigation expenses of the court below.

15. No orders as to costs.

June 19, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**